RECORD, CASE NO. 15347.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM NO., 963.

THE UNITED STATES, APPELLANT,

vs.

EZRA BAIRD.

APPEAL FROM THE COURT OF CLAIMS.

FILED JULY 8, 1893.

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1 IN THE COURT OF CLAIMS.

EZRA BAIRD
vs.
THE UNITED STATES. } 16774.

I. PETITION FILED JUNE 9, 1890.

To the Honorable the Court of Claims:

The claimant, Ezra Baird, respectfully represents:

The claimant was, from August 2, 1886, to May 31, 1889, marshal of the United States for the Territory of Idaho. During the said term of office as marshal the claimant was required to execute, and did execute, certain warrants of commitment of certain prisoners convicted of offenses against the laws of the United States to the penitentiary of said Territory, and some of the same to the penitentiary at Sioux Falls in the Territory of Dakota. For his services in executing said warrants of commitment the claimant charged six cents a mile under that clause of section 829 of the Revised Statutes of the United States which reads as follows:

"For travel, in going only, to serve any process, warrant, attachment, or other writ, including writs of subpœna in civil or criminal cases, six cents a mile, to be computed from the place where the process is returned to the place of service, or, when more than one person is served therewith, to the place of service which is most remote, adding thereto the extra travel which is necessary to serve it on the others."

2 Said mileage, computed one way only for each journey at the rate of six cents a mile, amounts to six hundred and forty-two dollars and seventy-eight cents ($642.78).

The claimant also disbursed certain moneys for the support of the penitentiary of said Territory of Idaho, amounting to the sum of fifty-four thousand four hundred and twenty dollars and fifteen cents ($54,420.15), for which he charged and claimed a commission at the rate of two per cent, under that clause of section 829 of the Revised Statutes of the United States which reads as follows:

"For disbursing money to jurors and witness, and for other expenses, two per centum."

Said commissions, calculated at the statutory rate of two per cent, amounted to the sum of one thousand and eighty-eight dollars and forty cents ($1,088.40).

His accounts for said mileage and commissions as aforesaid were presented to the district court for the first district of the Territory of Idaho in open court, and in presence of the attorney of the United States for said Territory, and were proved on oath to the satisfaction of said court, and an order was thereupon entered on the 9th day of May, in the year 1890, approving each of said accounts as being in accordance with law and just.

The claimant has not been able to obtain payment of said account for mileage from the Treasury Department, because the accounting officers of the Treasury do not follow the decision of this court in the case of John C. Tanner v. The United States; and as to said commissions on penitentiary disbursements, said accounting officers refused to allow this claimant such commissions on the ground that the compensation paid him for governing such peritentiary was in full for all disbursements for the same.

3 No other action than as aforesaid has been had on this claim in Congress, or by any of the Departments.

The claimant is the sole owner of this claim, and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made.

The claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimant is a citizen of the United States, and has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and the claimant believes the facts as stated in this petition to be true. And the claimant claims one thousand seven hundred and thirty-one dollars and eighteen cents ($1,731.18), besides costs.

GEORGE A. KING,
Attorney for Claimant.

TERRITORY OF IDAHO,
County of Nez Perces, ss:

Ezra Baird, being duly sworn, deposes and says: I am the claimant in this case. I have read the above petition, and the matters therein stated are true to the best of my knowledge and belief.

EZRA BAIRD.

Subscribed and sworn to before me this 29th day of May, 1890.
[SEAL.] RICHARD J. MONROE,
Notary Public.

4 II. TRAVERSE FILED JULY 16, 1893.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

JOHN B. COTTON,
Assistant Attorney-General.

5 III. FINDINGS OF FACT AND CONCLUSION OF LAW, FILED JUNE 12, 1893.

This case having been heard by the Court of Claims, the court, upon the evidence, finds the facts as follows:

I.

The claimant, Ezra Baird, was in the years 1886, 1897, 1888, and 1889, marshal of the United States for the Territory of Idaho.

II.

As such marshal he rendered to the district court for the first district of said Territory his account for executing warrants of commitment of certain prisoners to the penitentiary at Boisé City, Idaho, amounting to one hundred and fourteen dollars ($114); and to the penitentiary at Sioux Falls, Dakota, amounting to five hundred and twenty-eight dollars and seventy-eight cents ($528.78); total, six hundred and forty-two dollars and seventy-eight cents ($642.78).

III.

Said district court approved said accounts, amounting to six hundred and forty-two dollars and seventy-eight cents ($642.78).

IV.

He also, as such marshal, disbursed the sum of fifty-four thousand four hundred and twenty dollars and fifteen cents ($54,420.15), funds of the United States, for the use of the penitentiary of said Territory. For such penitentiary disbursements he claimed a commission at the rate of two per cent, amounting to one thousand and eighty-eight dollars and
6 forty cents ($1,088.40), and his account for the same was likewise approved by said district court for the first district of Idaho.

V.

The only reason why no commission was allowed him on such disbursements appears to have been that he was allowed compensation for the services required by section 1893 in the government of such penitentiary, which said compensation was fixed by the Attorney-General in accordance with said section at the rate of one thousand two hundred dollars ($1,200) a year.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides as a conclusion of law that the claimant is entitled to recover (1) on finding IV the sum of one thousand and eighty $\frac{40}{100}$ dollars (1,088.40); (2) that he is not entitled to recover on finding II.

BY THE COURT.

The court filed no opinion in this case.

7 IV. JUDGMENT ENTERED JUNE 12, 1893.

EZRA BAIRD
vs. } 16774.
THE UNITED STATES.

At a Court of Claims, held in the city of Washington on the 12th day of June, A. D. 1893, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant and do order, adjudge, and decree that the claimant, Ezra Baird, do have and recover of and from the United States the sum of one thousand and eighty-eight dollars and forty cents ($1,088.40).

BY THE COURT.

8 V. APPLICATION FOR AND ALLOWANCE OF APPEAL.

EZRA BAIRD
vs.
THE UNITED STATES. } No. 16774.

From the judgment rendered in the above-entitled cause, on the 12th day of June, 1893, in favor of claimant, the defendants, by their Attorney-General, on the 26th day of June, 1893, make application for and give notice of an appeal to the Supreme Court of the United States.

HOLMES CONRAD,
Assistant Attorney-General.

Filed June 26, 1893.
Allowed in vacation, June 30, 1893.

WILLIAM A. RICHARDSON,
Chief Justice.

9 IN THE COURT OF CLAIMS.

EZRA BAIRD
vs.
THE UNITED STATES. } No. 16774.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Washington, this 6th day of July, A, D. 1893.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) Case No. 15347, Court of Claims. Term No. 963. The United States, appellant, vs. Ezra Baird. Filed July 8, 1893.

Office Supreme Court U. S.
FILED.
OCT 12 1893
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1893.

THE UNITED STATES, APPELLANT,
vs.
EZRA BAIRD.
} No. 963.

APPEAL FROM THE COURT OF CLAIMS.

APPELLANT'S BRIEF.

CHARLES C. BINNEY,
Assistant Attorney,
J. E. DODGE,
Assistant Attorney-General,
For Appellant.

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[SEAL.]

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APPEAL FROM THE COURT OF CLAIMS.

APPELLANT'S BRIEF.

CHARLES C. BINNEY,
Assistant Attorney,
J. E. DODGE,
Assistant Attorney-General,
For Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1893.

THE UNITED STATES, APPELLANT,
vs.
EZRA BAIRD. } No. 963.

APPEAL FROM THE COURT OF CLAIMS.

APPELLANT'S BRIEF.

I.

STATEMENT OF THE CASE.

The appellee, Ezra Baird, was in the years 1886, 1887, 1888, and 1889 marshal of the United States for Idaho Territory. As such marshal he had the care and control of the United States penitentiary at Boise City. On the conclusion of his term of office he presented his accounts

to the district court for the first district of Idaho Territory, which accounts included the following items:

For mileage when executing warrants of commitment of prisoners	$642.78
For commissions, at 2 per cent, on disbursements for the support of the penitentiary	1,088.40

The accounts, including these items, were approved by the said district court May 9, 1890, but payment of the said items was refused by the accounting officers of the Treasury Department. The appellee filed his petition in the Court of Claims on June 9, 1890, which court decided, as a conclusion of law, that he was entitled to recover for commissions on penitentiary disbursements, but not for mileage when executing warrants.

The said court accordingly, on June 12, 1893, entered judgment in his favor and against the United States for $1,088.40, from which judgment the United States, by their Attorney-General, appealed to this court, the appeal being duly allowed June 30, 1893.

II.

SPECIFICATIONS OF ERROR.

The Court of Claims erred—

1. In not finding that the claimant's services, rendered to the United States in disbursing money for the support of the penitentiary, were among the services for which compensation is fixed by the Attorney-General under section 1893, Revised Statutes.

2. In entering judgment in the claimant's favor for the sum of $1,088.40 for commissions on penitentiary disbursements.

III.

BRIEF OF ARGUMENT.

The appellee having, in consequence of this court's decision in *United States* v. *Tanner* (147 U. S., 661), abandoned his claim for mileage, the only subject of argument left in the case is his claim for commissions.

It is admitted that the appellee has disbursed the sum of $54,420.15 of United States funds for the use of the Boise City penitentiary, but it is respectfully submitted that he has received his lawful compensation for both this and all other of his services in regard to the penitentiary.

He was in charge of the penitentiary in accordance with sections 1892–'94, Revised Statutes, which read as follows:

> SEC. 1892. Any penitentiary which has been, or may hereafter be, erected by the United States in an organized Territory shall, when the same is ready for the reception of convicts, be placed under the care and control of the marshal of the United States for the Territory or district in which such penitentiary is situated; except as otherwise provided in the case of the penitentiaries in Montana, Idaho, Wyoming, and Colorado. [The exception was repealed as to Montana, Idaho, and Wyoming by 18 Stat., 112.]
>
> SEC. 1893. The Attorney-General of the United States shall prescribe all needful rules and regulations for the government of such penitentiary, and the marshal having charge thereof shall cause them to be duly and faithfully executed and obeyed, and the reasonable compensation of the marshal and of his deputies for their services under such regulations shall be fixed by the Attorney-General.

> SEC. 1894. The compensation, as well as the expense incident to the subsistence and employment of offenders against the laws of the United States, who have been, or may hereafter be, sentenced to imprisonment in such penitentiary, shall be chargeable on, and payable out of, the fund for defraying the expenses of suits in which the United States are concerned, and of prosecutions for offences committed against the United States; but nothing herein shall be construed to increase the maximum compensation now allowed by law to those officers.

As required by section 1893, the appellee's compensation was fixed by the Attorney-General at $1,200 a year, but the former now contends that the services for which this section requires the compensation to be fixed do not include disbursements, which are among the matters for which commissions are allowed under section 829.

The answer to this is that the appellee had charge of the penitentiary by authority of sections 1892, 1893, and 1894 only, sections which provide both for his duties and his compensation. Section 1892 places the penitentiary under the care and control of the marshal, but his control is not absolute. The Attorney-General is empowered to prescribe all needful rules and regulations for the government of the penitentiary, and the services of the marshal are expressly stated to be "under such regulations." It is perfectly clear, from the language used, that the rules and regulations of the Attorney-General control the acts of the marshal, that the power to regulate the latter's duties and to fix the compensation for their performance are vested in the same person.

Now, the appellee could have performed no duties under the regulations of the Attorney-General without the expenditure of money. He could not have hired guards, nor fed or clothed prisoners, nor kept the prison supplied with fuel, lights, or furniture. There is no possible way of separating the appellee's functions in disbursing money from his ordinary duties as marshal in charge of the penitentiary. The former were necessarily incident to the latter, and hence they are clearly to be classed among the "services under such regulations," for which services the Attorney-General was empowered to fix, and did fix, his compensation. Section 1894 recognizes that "the subsistence and employment of offenders" involves expense, and if any distinction was to be drawn between the appellee's duties in paying out money for this purpose and the other duties for which his compensation is provided for by section 1893, section 1894 should contain this distinction, yet it has not a word in any such connection.

Prior to the passage of the *Act of 10th January*, 1871 (16 Stats., 398), reënacted as sections 1892, 1893, and 1894 of the Revised Statutes, all marshals had certain duties for which compensation was provided in the fee bill of 26th February, 1853 (10 Stats., 161, 165), reënacted as section 829 of the Revised Statutes; and by another section of the same fee bill (now section 823) it was provided that they should receive no other compensation. The act of 1871 gave *certain* marshals, those of Territories containing United States penitentiaries, a new function and duty, viz, that of keeper of the penitentiary; and for this new function, so distinct and different from the duties of

marshals in general, the same law provided a separate and distinct compensation, the amount to be fixed by the Attorney-General, in view of all the burdens, risks, and duties of the new position. The same act that creates the duties provides the compensation, precisely as it would have done had the office of keeper been one to be filled by some one not holding any other office. The act bears on its face no indication that the compensation is partial and to be supplemented by the general-fee bill. It certainly seems to require the Attorney-General to provide compensation in full for the new duties, and it is to be presumed that all the equitable considerations urged by the appellee were duly weighed by the Attorney-General in fixing the amount of compensation.

There is not a word in this act to indicate any intention that the marshals should have any other compensation for the duties therein imposed upon them than that "reasonable compensation" which the Attorney-General is directed to fix. The mere fact that the acts of 1853 and 1871 were simultaneously reënacted in the Revised Statutes can not possibly alter their meaning and effect as regards the duties of marshals in charge of penitentiaries. Section 829 makes no reference to the special duties of marshals in charge of penitentiaries, while there is nothing in sections 1892-'94 to suggest the idea that the compensation to be fixed by the Attorney-General is not in full for all duties imposed upon such marshals by these sections.

Section 829 appears to refer only to the ordinary duties of all marshals, and the words "and for other expenses"

may properly be construed under Lord Tenterden's rule of intrepretation "*ejusdem generis*" (*Sandiman* v. *Breach*, 7 Barn. & Cress., 96, 99) as meaning other expenses of the same general character as disbursements to jurors and witnesses, *i. e.*, disbursements made in the performance of the ordinary duties common to all marshals. Even conceding, however, that section 829 applied to all disbursements for which no other compensation was provided, the case would still be controlled by section 1765, Revised Statutes.

> No officer in any branch of the public service or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation.

The meaning of this section as settled in a series of decisions (*Hoyt* v. *U. S.*, 10 How., 109, 141; *Converse* v. *U. S.*, 21 How., 463; *U. S.* v. *Shoemaker*, 7 Wall., 338; *Hall* v. *U. S.*, 91 U. S., 559; *U. S.* v. *Brindle*, 110 U. S., 688; *U. S.* v. *Saunders*, 120 U. S., 126; *Badeau* v. *U. S.*, 130 U. S., 439) is that while a public officer may hold two distinct offices and receive a separate compensation for each, or may properly claim compensation for services wholly separate from those of his office, yet that for all services rendered by an officer in his capacity as such he can claim no extra compensation.

While section 1765 may not affect this case directly, the appellee's contention being that these commissions are

"authorized by law" under section 829, yet it furnishes a rule of interpretation for all statutes providing for the compensation of public officers, by showing the intention of Congress to restrict all compensation as far as possible to salaries and fees definitely and specifically fixed, and to prevent the recovery of any separate compensation for the performance of duties incidental to the holding of an office, the compensation of which is definitely provided for.

Certainly the interpretation of section 1765 by this court in *Converse* v. *United States* (21 How., 463, 473) can not possibly help the appellee, but is strongly against him, for it was held that although for disbursements in the light-house service outside of his own district a collector of customs could recover commissions, yet that, if ordered to purchase articles required for light-house purposes *in his own district*, and to make the necessary disbursements therefor, "for such services he would be entitled to no compensation beyond his salary as collector," except in case that salary were below $2,500, when certain other statutory provisions applied.

Similarly, Revised Statutes, §§ 3654–3658, and acts of March 3, 1875, c. 131, § 4; August 7, 1882, c. 433, par. 2; March 2, 1889, c. 411, par. 1 (1 supp. to Rev. Stats., pp. 78, 380, 697), give the appellee's contention but little support. These statutes concern disbursements by special disbursing agents or other officers acting as such, or by depositaries of the public moneys. So far from recognizing that disbursement of public money is a distinct subject of compensation in all cases they exclude the idea on the principle that *expressio unius est exclusio alterius*.

It is a familiar doctrine, but one which this court has found it necessary to call attention to, that "the ordinary rule, in the absence of legislation, is that, if the statute increases the duties of an officer by the addition of other duties germane to his office, he must perform them without extra compensation." (*United States* v. *King*, 147 U. S., 676, 679.) On the same principle all duties which have been germane to an office ever since such office existed, or which are incidental to and necessarily involved in the performance of those duties for which a compensation is provided, must be performed without extra compensation.

Even if there could be any doubt as to the non-applicability of section 829 in this case, the doubt should be resolved in favor of the United States. As was recently said in the circuit court of appeals:

> We do not know any rule of public policy or of practical experience which requires that when a statute allowing an officer compensation admits of two interpretations, the words should be construed liberally in favor of the officer, and not strictly in favor of the United States. The well known abuses under the fee system, by which the Government has been defrauded of large amounts through unconscionable charges, and the lax administration of the law in this respect, would seem to require a strict interpretation in favor of the United States, rather than in favor of the officer. *United States* v. *Clough* (C. C. A., 6th Circ.) 55 Fed. Rep., 373.

In the present case the natural as well as the strict interpretation would seem to limit the applicability of section 829 to expenses incurred in the performance of those duties common to all marshals, which duties which

that section purports to deal with, and to indicate that section 1893 provides compensation for all the duties peculiar to a marshal in charge of a penitentiary in the Territories.

In *United States* v. *Tanner* (147 U. S., 661) this court refused to uphold a strained construction of section 829 where the effect was to make one duty of a marshal, the transportation of criminals (involving the delivery of a warrant of commitment), appear to be another duty, the serving of a warrant, and where the object of the construction was to enable the marshal to obtain double pay for one and the same act.

That decision has already cut away one item of the appellee's original claim. It now remains for this court, by parity of reason, to deal with the other item, and to refuse to uphold a strained construction of sections 829, 1892, 1893, and 1894, all taken together, where the effect is to make one duty of certain marshals, the having the care and control of a penitentiary, to appear as a distinct duty, the disbursement of the money required in the exercise of that care and control; and where the object of the construction is again to secure double pay for the performance of one and the same function.

The appellant therefore submits that the judgment of the Court of Claims should be reversed.

CHARLES C. BINNEY,
Assistant Attorney,
J. E. DODGE,
Assistant Attorney-General,
For Appellant.

SUPREME COURT U.S.
FILED
AUG 11 1898
JAMES H. McKENNEY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

No. 963.

THE UNITED STATES, Appellant,

vs.

EZRA BAIRD.

BRIEF FOR APPELLEE.

GEORGE A. KING,
Attorney for Appellee.

H. L. McQUEEN, PRINTER.

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THE UNITED STATES, Appellant,
vs.
EZRA BAIRD. } No. 963.

BRIEF FOR APPELLEE.

I.—Statement of the Case.

The claimant, Ezra Baird, filed his petition in the Court of Claims, June 9, 1890, for the recovery of official fees as marshal of the United States for the Territory of Idaho, from August 2, 1886, to May 31, 1889. (Record, p. 1.)

The claim consisted of two items:

1. Mileage at the rate of six cents a mile in the conveyance of prisoners to the penitentiary, amounting to $642.78. (P. 3, Finding II.)

2. Commission of two per cent. on disbursements for the penitentiary, amounting to $1,088.40, disallowed by the accounting officers of the Treasury on the ground that this service was covered by the compensation allowed the marshal for services in the government of the penitentiary under Rev. Stat. § 1893, which compensation was fixed by the Attorney-General at $1,200 a year. (P. 3, Findings IV, V.)

The section referred to, with the one immediately preceding and following, are as follows:

"Sec. 1892. Any penitentiary which has been, or may hereafter be, erected by the United States in an organized Territory shall, when the same is ready for the reception of convicts, be placed under the care and control of the marshal of the United States for the Territory or District in which such penitentiary is situated; except as otherwise provided in the case of the penitentiaries in Montana, Idaho, Wyoming and Colorado. [The exception was repealed as to Montana, Idaho and Wyoming by 18 Stat. 112.]

"Sec. 1893. The Attorney-General of the United States shall prescribe all needful rules and regulations for the government of such penitentiary, and the marshal having charge thereof shall cause them to be duly and faithfully executed and obeyed, and the reasonable compensation of the marshal and of his deputies for their services under such regulations shall be fixed by the Attorney-General.

"Sec. 1894. The compensation, as well as the expense incident to the subsistence and employment of offenders against the laws of the United States, who have been, or may hereafter be, sentenced to imprisonment in such penitentiary, shall be chargeable on, and payable out of, the fund for defraying the expenses of suits in which the United States are concerned, and of prosecutions for offenses committed against the United States; but nothing herein shall be construed to increase the maximum compensation now allowed by law to those officers."

The account for both items was approved by the District Court for the First District of Idaho. (P. 3, Findings III, IV.)

The Court of Claims disallowed the first item on the authority of *United States* v. *Tanner*, 147 U. S. 661.

The second item was allowed, and judgment entered June 12, 1893, in favor of the claimant for $1,088.40 (p. 3).

From this judgment the United States appealed (p. 4).

II.—Brief of Argument.

The only question arising on this appeal is as to the correctness of the action of the Court below in the allowance of a commission of two per cent. for the disbursement of funds of the United States for the use of the penitentiary of the Territory.

The law, Revised Statutes, Section 829, allows to marshals,

"For disbursing money to jurors and witnesses, and for other expenses, two per centum."

The claimant, therefore, is clearly entitled to this commission unless the right to it is barred by some other statutory provision, which, in express terms, or by necessary implication, substitutes some other mode of compensation for the percentage.

Such other mode of compensation, it is insisted by the United States, is provided by the terms of section 1893, above quoted.

But in what respect can a compensation provided for the marshal and his deputies "for their services" under such "needful rules and regulations" as shall be prescribed by the Attorney-General "for the government of the penitentiary," be held to cover compensation for disbursement of money for its expenses? The two services are as distinct as any two things can be which are connected with the same subject, so much so that they might easily be performed by two different persons.

Besides, the disbursement of money is not aptly described by the terms, "services under such regulations."

Compensation for disbursement of money is not for mere services, but is also very largely a compensation for risk incurred. The laws regulating the disbursement of public moneys are complicated and intricate. They in-

volve great risk on the part of the officers charged with the duty of disbursement. If erroneous payments are made, they are liable to be stopped in the account.

The Commissioner of Indian Affairs, in his report for 1882, emphasizes the embarrassments surrounding disbursing officers. He says (p. v):

"One great cause of embarrassment and discouragement to Indian agents is the trouble and annoyance they find in keeping their accounts so as to comply technically with all the regulations and rulings in reference to the final settlement of their accounts. As the matter now stands, an agent may execute to the letter an order given him by the Secretary of the Interior for the payment of money, and yet that item in his account may be suspended against him, and he and his sureties be compelled by law to pay the money again.

"The result is, if he refuses to obey the orders of his superior he loses his position, and if he obeys, he loses his money."

Similar embarrassments surround disbursing officers in every other department of the public service.

In re *Smith*, 24 C. Cls. 209, is a case in which the present Paymaster-General of the Army, having made a payment by direct order of the Secretary of War, had the amount stopped against his pay by the accounting officers of the Treasury; and, notwithstanding a decision of the Court of Claims in his favor, he never succeeded in obtaining the removal of the charge until he obtained relief by special legislation of Congress for the benefit of himself and other officers similarly situated; and not then till twelve years had elapsed after he had made the payment. (27 Statutes, 427.)

In *United States* v. *Prescott*, 3 How. 578, it was held that even the theft of money from a disbursing officer without fault on his part did not excuse him from paying it over when called upon, on the ground (p. 588) that "the obligation to keep safely the public money is

absolute, without any condition, express or implied; and nothing but the payment of it, when required, can discharge the bond."

A compensation, therefore, paid to a marshal for his services in governing the penitentiary can no more be held to include disbursement of public money than the compensation of a collector of customs could be held to include the disbursement of money for the light-house service, as was held in *Converse* v. *United States*, 21 How. 463.

Disbursement of money has always been considered in the legislation of the United States as a distinct and separable subject of compensation from other services. See the laws regulating commissions for disbursements, Revised Statutes, §§ 3654–3658; acts of 1875, March 3, chap. 131, § 4; 1882, Aug. 7, chap. 433, par. 2; and 1889, March 2, chap. 411, par. 1; 1 Supp. to R. S. 78, 380, 697; all of which treat the disbursement of public money as a service entirely separate and distinct from other official services, and to be covered by a distinct and separate compensation.

The Court of Claims therefore rightly adjudged to the claimant as late marshal of the Territory of Idaho the commission allowed him by law for the disbursement of the penitentiary expenses, and its judgment should be affirmed.

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